

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
At Huntington

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132 HEALTH AND WELFARE FUND,
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132 PENSION FUND; INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL NO. 132
APPRENTICESHIP AND SKILL IMPROVEMENT FUND;
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132 ANNUITY AND SAVINGS FUND; and
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 132, AFL-CIO,

Plaintiffs,

v.

Civil Action No. 3:19-cv-00641

LMS Construction, Inc., an Ohio Corporation,

Defendant.

COMPLAINT

Your plaintiffs respectfully complain and say unto the Court as follows:

1. Jurisdiction of the Court is invoked under the provisions of Section 502 and 515 of the Employee Retirement Income Security Act of 1974, (ERISA), 29 U.S.C. §§ 1132 and 1145, as amended by the Multiemployer Pension Plan Amendment Act (MPPAA), 29 U.S.C. §§ 1132(g) and 1145, and under Section 301 of the Labor Management Relations Act of 1974, (LMRA), 29 U.S.C. § 185.

2. The Plaintiff, International Union of Operating Engineers, Local No. 132 Health and Welfare Fund (Health Fund), is a non-profit organization operated for the purpose of providing health and welfare benefits to its participating members and is an "Employee Benefit Plan" as

defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132 Pension Fund (Pension Fund) is a non-profit organization operated for the purpose of providing pension benefits to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132 Apprenticeship and Skill Improvement Fund (Apprenticeship Fund) is a non-profit organization operated for the purpose of providing training to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132 Annuity and Savings Fund (Annuity Fund) is a non-profit trust organization operated for the purpose of providing annuity benefits to its participating members and is an "Employee Benefit Plan" as defined by ERISA. The Plaintiff, International Union of Operating Engineers, Local No. 132, AFL-CIO (Union), is a labor organization representing employees for collective bargaining purposes and is a "Union" as defined by the LMRA. The situs of the Plaintiff Health Fund, Pension Fund, Apprenticeship Fund and Annuity Fund and the Plaintiff Union are within the jurisdiction of the United States District Court for the Southern District of West Virginia.

3. The Defendant, LMS Construction, Inc. is an Ohio Corporation authorized to do business in the State of West Virginia and actively engaged in the construction industry affecting commerce. The Defendant is an "employer" as defined in ERISA.

4. At all times material to this action, and by the executed Acceptance of Agreements dated February 9, 2009, the Defendant, LMS Construction, Inc, was bound to the terms and conditions of a collective bargaining agreement commonly referred to as the "Heavy Highway Agreement" by and between the Constructors' Labor Counsel of West Virginia, Inc. and the Ohio Valley Construction Employers Council, Inc., and the International Union of Operating Engineers, Local Union No. 132,

AFL-CIO, which agreement provided that the Agreements cover a term beginning December 1, 2006 and ending November 30, 2009 and from year to year thereafter unless either party notifies the other in writing of its intention to terminate the said agreement at least sixty (60) days prior to the expiration of the Agreements or any other subsequent anniversary thereof.

5. At all times material to this action, and by the executed Acceptance of Agreements dated February 28, 2009, the Defendant, LMS Construction, Inc., was bound to the terms and conditions of a collective bargaining agreement commonly referred to as the "Building Trades Agreement" between the Kanawha Valley Builders Association, Tri-State Contractors Association of Huntington, West Virginia, the Ohio Valley Construction Employers Association of North Central West Virginia, Inc., and the Parkersburg-Marietta Contractors Association and the International Union of Operating Engineers, Local Union No. 132, AFL-CIO, which agreements are effective June 1, 2008 and cover a term beginning June 1, 2008 and ending November 30, 2012 and from year to year thereafter unless either party notifies the other in writing of its intention to terminate the said Agreements at least sixty (60) days prior to the expiration of the Agreements or any subsequent anniversary thereof. At least Labor Council of West Virginia, Inc. and the Ohio Valley Construction Employers Council, Inc. and the International Union of Operating Engineers, Local Union No. 132, AFL-CIO, which agreement provided that the Defendant would report and make monthly contributions to the Plaintiff Funds and withhold and pay union dues to the Plaintiff Union on behalf of its employees who are covered by such collective bargaining agreement.

6. At all times material to this action, the Defendant was bound to the terms and conditions of a Fringe Benefit Program Agreement dated February 9, 2009, whereby the Defendant agreed to be bound by all of the terms and conditions of the Agreements and Declarations of Trust for each

of the Plaintiff trust funds and to timely pay contribution amounts to each Fund as set forth in the current collective bargaining agreements.

7. The Defendant has failed to timely report and pay the required contributions to the Plaintiff Funds and the administrative dues to the Plaintiff Union as required by the above referenced agreements for its employees for all work performed for the period of April 1, 2017 through July 31, 2019.

8. Pursuant to the above referenced collective bargaining agreements, Plaintiff Funds' Trust Agreements and Collection Policy, and/or 29 U.S.C. §1132(g)(2), the Defendant is obligated to Plaintiff Funds and Plaintiff Union in the amount of \$205,696.53 for unpaid contributions and administrative dues, together with interest thereon in the amount of \$22,486.45 and liquidated damages in the amount of \$24,986.26 for a total amount owed of \$253,169.24 as of August 15, 2019.

9. Pursuant to the above referenced collective bargaining agreements, Plaintiff Funds' Trust Agreements and Collection Policy, and/or 29 U.S.C. §1132(g)(2)(D), the Defendant is obligated to pay the attorney fees and court costs incurred by the Plaintiffs in this action.

10. A copy of this complaint will be served upon the Secretary of Labor and Secretary of Treasury as required by ERISA, 19 U.S.C. § 1132(h).

WHEREFORE, Plaintiffs pray this Court will:

A. Award judgment to the Plaintiffs against the Defendant for the amount of contributions and dues owed to the Plaintiffs, together with interest and liquidated damages thereon;

B. Require the Defendant to pay the costs of this proceeding, including attorney fees and auditor fees; and

C. Award Plaintiffs such other and further relief against the Defendant as to the Court may seem meet and proper.

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